

### REMARKS

New claims 6-20 are added without introducing any new subject matter. Applicants believe that these new claims 6-20 are novel and not obvious over the art of record. In the Office Action mailed July 9, 2004, claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph. Reconsideration of the § 112 rejection is respectfully requested because Applicants believe this rejection is improper.

Specifically, the method of independent claim 1 calls for determining communication rates. The method includes identifying a set of possible communication rates based on an amount of transmit power available for communications and identifying a communication rate based on a received signal quality. The Examiner states that it is not clear where the inventive method is implemented in a communication system and the claims as recited are unduly broad and not limited to an environment in which the rate determination method is performed. Further, the Examiner points to the term "identifying" as being not clear, *i.e.*, whether it is an active step or a passive step.

Applicants respectfully transverse the § 112 rejection of claims 1-5. Under the requirement for particularity and distinctness in claim language, *i.e.*, definiteness in claiming in view of the § 112, second paragraph, it is not necessary that the claims recite the details of use of the invention set out in the Specification. In fact, in the absence of evidence to the contrary, the claims must be presumed to be what Applicants regards to be their invention. Moreover, breadth alone does not make a claim indefinite. So long as the language used defines the invention with a reasonable degree of particularity and distinctness, a claim may in general, be drawn as broadly as the prior art will allow. See M. P. E. P. § 706.03(d). It is also well settled that a choice of wording is not a basis for objection and rejection as long as it is definite and not

inconsistent with accepted terminology in the art. If patentable novelty is disclosed and it is apparent that the claims are directed to such patentable subject matter, some latitude in the manner of expression and the aptness of terms is permitted even though the claim language is not as precise as the Examiner might desire. See M. P. E. P. § 706.03(d). Therefore, Applicants respectfully submit that Claims 1-5 are clear and request that the Examiner's rejections be withdrawn. In view of the prior art, Applicants respectfully submit that a limitation directed to a "location" at which the method is performed is unwarranted. Similarly, the prior art does not warrant a limitation that "identifying a communication rate" be performed "actively" or "passively".

Claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,914,950 to Tiedemann, Jr. et al., (hereinafter, "Tiedemann"). However, the Applicants respectfully submit that the Tiedemann reference fails to even remotely teach or suggest identifying a subset of communication rates from a set of possible communication rates where the communication rate and the set of possible communication rates are identified based on two different criteria. In fact, there is no specific teaching or suggestion in the Tiedemann reference where a set of possible communication rates is identified based on an amount of transmit power available for communications, as recited in claim 1. Absent such a specific teaching or a suggestion, the Tiedemann reference cannot render claim 1 limitations obvious in a *prima facie* manner to one of ordinary skill in the pertinent art. Therefore, the Examiner is respectfully requested to reconsider the §103 rejection of claim 1.

Specifically, the Tiedemann reference merely discloses a method and an apparatus for reverse link rate scheduling in which a maximum scheduled transmission rate is simply assigned to a scheduled user. More particularly, in col. 9, lines 44-46, in the Tiedemann reference, a base

station controller shown in Figure 2, uses a channel scheduler 12 which assigns a maximum scheduled transmission rate for each scheduled user based on the collected information, which includes the transmit power available to each remote station section 6, (Mobile Station).

Claims 2-5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,731,618 to Chung et al., (hereinafter, "Chung"), in view of the Tiedemann reference. Claim 2 calls for a method for determining communication rates. The method of claim 2 comprises identifying a set of possible communication rates based on a number of available communication channels and identifying a communication rate based on a received signal quality.

Instead, the Chung reference discloses a coding scheme for multi-user communication in which at the base station, the number of Walsh codes and the fractional power available for data is determined. See Figure 5 of the Chung reference. To generate packets at the base station, a rate per dimension per time slot is determined at the mobile station. Instead of identifying a set of possible communication rates based on a number of available communication channels, the Chung reference teaches that the mobile station provides the base station an estimated data rate assuming all code dimension is available or rate per code dimension. The base station then can calculate the actual data rate since it knows how much code space is available. See col. 7, lines 63-67. That is, neither the mobile station nor the base station identifies a set of possible communication rates based on a number of available communication channels, as claimed in claim 2.

The Examiner acknowledges that the Chung reference does not specifically teach identifying a communication rate based on a received signal quality. For this absent teaching, the Examiner relies on the Tiedemann reference. However, instead of identifying a

communication rate based on a received signal quality, the selector element 14 in the Tiedemann reference appears to do the opposite by simply maintaining the interference at an acceptable level (a received signal quality) to maintain a quality communication (a communication rate). See col. 12, lines 35-40. Therefore, even if combined, a combination of the teachings in the Tiedemann and Chung references could not teach or suggest the claim 2 limitations to one of ordinary skill in the relevant art.

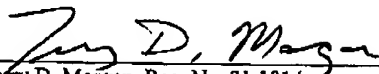
Accordingly, as indicated above and earlier in the content of claim 1, the Tiedemann reference does not support the Examiner's argument. Moreover, there is no motivation presented in the Tiedemann reference to incorporate the rate determination which is not based on the received signal quality in the Chung reference for identifying a communication rate based on the received signal quality. For at least the same reasons as noted above in the context of claim 2, claims 3-5 are also not rendered obvious in a *prima facie* manner over the Chung reference in view of the Tiedemann reference. Thus, claims 2-5 are patentably distinguishable and allowance thereof is respectfully requested of the Examiner. The Examiner is respectfully requested to reconsider all the pending claims.

In view of these amendments and remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. If for any reason, the Examiner finds the application other than in condition for allowance, the Examiner is invited to contact the undersigned at (713) 934-4089 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Date:

11-9-04



Terry D. Morgan, Reg. No. 31,181  
Williams Morgan & Amerson, P.C.  
10333 Richmond Avenue, Suite 1100  
Houston, TX 77042  
(713) 934-4050  
(713) 934-7011 (Fax)  
ATTORNEY FOR APPLICANTS